The Library of Congress'

EARLY STATE RECORDS PROJECT

converted from the original microfilm held by the
Vincent C. Immel Law Library, Saint Louis University

through the generous support of a grant from the

Council on Library and Information Resources

This document contains handwritten text that may be partially illegible due to age, penmanship, or deterioration of the medium. LLMC has scanned the material in the same format and page order in which it is maintained in the source document taken from the collection "Records of the States of the United States of America, a microfilm compilation."

Office U.S. Attorney,
Territory of Nevada.
Carson City, Oct. 14. 1861.

To the Honorable House of Representatives of the Territory of Nevada:

On the 12th instant, I had the honor to receive from your honorable body the following communication.—

"Territory of Nevada.
House of Representatives.
To the Hon. B. B. Bunker

Sir:- The following preamble and resolution passed the House this day. (~~12th inst~~).

"Whereas, there is a diversity of opinion among the members of the House as to the Constitutionality of a law conferring criminal jurisdiction upon Probate Courts provided for in the organic act, ~~in~~ also as to the constitutionality and policy of giving the Probate courts appellate jurisdiction from justices' courts in civil cases. Therefore Resolved, That the U.S. Attorney, for the Territory of Nevada, the Hon. B. B. Bunker, be and he is hereby requested to furnish this house with his legal opinion ~~on the above~~ ~~questions~~ ~~opinion~~ on the above question at as early a day as his official duties will permit."

"Wm Martin Gillespie
Clerk"

I have given your communication all the attention I could at this time command, and hasten to reply. "The judicial power of the Territory is vested in a Supreme Court, District Courts, Probate Courts and Justices of the Peace".

The fourth clause of the 9th section of the organic act says: "the jurisdiction of the several Courts herein provided for, both appellate and original, and that of the Probate courts and of the justices of the Peace, shall be as limited by law." To answer your question intelligibly we must understand which are appellate and original courts, and courts where both appellate and original jurisdiction. Some only appellate, as the Supreme Court, and some only original jurisdiction.

III. It is known to every person at all acquainted with courts ~~as the lowest~~ that the justice's courts can have only original jurisdiction, as that is simply a primary court — the lowest ~~in the~~ ~~[illegible]~~ known ~~of~~ to the law of criminal and civil proceedings. It can have, therefore, no appellate jurisdiction, but it has a jurisdiction "such as shall be limited by law," and the organic act limits that jurisdiction only in civil suits, forbidding it to act where the sum demanded is over one hundred dollars, and where the title or boundaries of land are in controversy. In all other respects the Territorial legislature can define the judicial power of Justices of the Peace, except in such matters that properly come within the jurisdiction of the higher courts. giving Justices of the Peace the power to impose fines for minor offences against the peace of the Territory, for misdemeanors, &c. and to take recognisances in appeals and bind on examination, the offender against law to answer to a higher court. The Legislature can give a justice jurisdiction to impose fines and penalties to any reasonable extent, which ~~shall~~ may be final, ~~unless appealed from~~.

2d The next court we notice is the Supreme court. its jurisdiction is limited by the organic act to that of appellate, no original powers.

3d. The next are the District courts. Under the act they possess both appellate and original jurisdiction.

4th The last is the Probate court. This court is classed with justice's court whose jurisdiction ~~are~~ is to be [illegible] limited by law - not the jurisdiction over ~~the~~ what shall employ the attention of these courts, but the _extent_ of that jurisdiction in determining, conclusively, the questions there tried. Will it do to apply the language, "appellate and original", to all the above courts - Supreme, District, Probate and justice's - alike? Certainly not, for then would a justice's court have appellate jurisdiction. How shall the courts be classed, then? Plainly as the act classes them, the Supreme and district courts having "both appellate ~~jurisdiction~~ and original" jurisdiction, and the Probate and justice's courts having jurisdiction, as original, courts ~~such~~ as is "limited by law"; and we are forced to the conclusion, therefore, that Probate courts do, like justices courts, possess only original jurisdiction under the organic act.

This conclusion is not reached by the act alone. We have the highest authority also in the history of Probate Courts which is ~~are~~ marked by the traces of the earliest legal learning of both the Civil and English law, and it has come down to us through the care and scrutiny of the purest judgments that have illustrated human wisdom.

The first traces of the existence of the Probate courts are found in the Roman Law long prior to the existence of the Twelve Tables, and they clearly define it as one of exclusively original jurisdiction over a certain kind of business, and none other; to wit; the settlement of the estates of deceased persons, and all affairs connected therewith. It stands in the place of the deceased as custodian of his property, ~~husband~~ protector to the widow, and ~~father or~~ ~~and~~ ~~natural~~ guardian to his children and heirs, settling and distributing his property, paying his debts from his effects, and bringing all his worldly matters to a close. It is primary in its character, as much so as a justice's court.

The judicial functions of the Probate court were first administered by the sovereign or king afterward transferred to the officers of the church and from them to the civil power, which produced the Statutes of 31 Edward III ch. 11, and 21 Henry VIII ch. 5. The provisions of those Statutes have been adopted in this country by all the States with but slight alterations, and by all the Territories, with the exception of Utah and is among the most firmly settled laws in this country, viz. that Probate Courts have never appellate jurisdiction and are limited to the particular business above indicated ~~above~~.

The most perfect model of a Probate Court in this country is that in the District of Columbia under the name of the Orphan's Court, framed by the united wisdom of all the States in Congress assembled. By consulting this court we can learn the judgements and opinions of the wisest and clearest minds from our earliest history as a nation to the present, which will be a guide that can hardly lead us wrong. See

Brightly's Digest, pp. 237, 238, 239 and 240. Secs 30–44 inclusive.

The questions you propose, I answer, therefore.

1st. By the letter of the organic act it may be legal to confer original criminal jurisdiction upon Probate courts provided for in the organic act. But whether it would be wise and proper to depart from a system that has ~~been~~ ~~tried~~ worked so ~~long~~ well and has stood unshaken through so long a lapse of time — through all changes of courts and the vicissitudes in the affairs of men, it is for you, in the light of established precedent and the peculiar and sound nature of the Court, in your wisdom and prudence to determine.

2° It would not be legal nor policy to give Probate courts appellate jurisdiction from justices' courts ~~in civil cases~~.

Knowing your desire to have as early a reply as possible, I beg you to excuse the evidences of haste and the errors you may discover in this response, and permit me to say,

I have the honor to be
Your Ob't Serv't.
B. F. Meeker.